

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6961 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MAHEMDABAD EDUCATION SOCIETY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6961 of 1999
MR HARSHAD J SHAH for Petitioner.
Mr. KT Dave, AGP for Respondent.

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 22/04/2004

ORAL JUDGEMENT

The petitioner Education Society had preferred the present Special Civil Application under Article 226 of the Constitution of India for an appropriate writ, direction or order directing the respondent to pay Grant to the trust for running the Arts and Commerce College at Mahemdabad, District-Kheda. The petitioner trust has also challenged the Government resolution by which the

college is recognised by the State Government or sought to be deprived of the benefit of grant from the date of recognition of such college or from such date or dates as this Court deems appropriate to stipulate.

2. The petitioner trust applied to the Gujarat University for affiliation in the years 1994-95, 1995-96, and 1996-97 and prayed for granting recognition to start Arts and Commerce College at Mahemdabad. The Gujarat University refused affiliation to the college run by the petitioner trust. That being aggrieved and dissatisfied with the action of the Gujarat University in refusing to grant affiliation to the petitioner trust for running the Arts & Commerce College at Mahemdabad. The petitioner approached the State Government and the State Government by order dated 22nd January 1997 accorded approval to the College intended to be established by the petitioner trust on conditions set out in the said order. One of the conditions incorporated in the said order was to the effect that the petitioner trust shall not be entitled to any grant at any time and that the institution shall not demand any grant also. Thereafter on the basis of the aforesaid order passed by the State Government dated 22nd January 1997 the Gujarat University granted affiliation to the college established by the petitioner trust by its communication dated 21st August 1997 initially for a period of one year, i.e. for the academic year 1997-98. Thereafter the said affiliation had been extended from to time and for every academic year. As affiliation accorded by the State Government was conditional to the effect that the trust will not be entitled to any grant and that they will not ask for any grant in future. The petitioner trust was required to furnish an affidavit/undertaking to the aforesaid effect and necessary affidavit/undertaking was also furnished to the aforesaid effect and on furnishing the aforesaid affidavit/undertaking on behalf of the petitioner Education Society affiliation was subsequently granted by the Gujarat University by order dated 21st August 1997.

3. It is the case of petitioner that the composition of the students studying in the college of the petitioner trust community-wise was as follows;

1. 33% of the students were girls;
2. 32% of the students belonging to SC/ST and other reserved candidate students;
3. The rest of the students were coming from

economically backward classes.

It is also the case of the petitioner that for the purpose of creating infrastructure for the college the petitioner trust had spent more than Rs. 80 lakhs which was received by the trust by way of donation. That in all 460 students came to be admitted in the college in various faculties and they got only Rs.1,85,000 towards the fees. It is also the case of petitioner trust that they were to make payment of Rs. 14 lakhs per year towards salary. Thus approximately there was a deficit of Rs. 12 lakhs at the relevant time. As it was not possible for the petitioner to run the trust without grant and the institution was facing financial difficulties they had approached the State Government by making representations requesting them to lift the ban/condition which was imposed while granting the recognition to the institution for running the college, i.e. with regard to nonpayment of grant. Several representations were made, however, the State Government rejected all the representations made by the petitioner-trust on the ground that the institution was granted affiliation on condition that they will not be entitled to grant on permanent basis and that as per the prevailing policy of the State Government no recognition is granted with grant. The said communications refusing to accept the request of petitioner trust for the purpose of grant were dated 28th August 1998, 23rd February 1999 and 29th May 1999. As it was found by the petitioner institution that the State Government had relaxed the conditions with regard to grant to other institution namely in the case of one Samarpan Sewa Trust, Vasan, District-Gandhinagar, Sardar Patel Education Trust, Arsh Education Trust, Vijapur and other institutions and it was found that though the aforesaid institutions/trusts were given the affiliation on condition that they will not be entitled to any grant permanently, the State Government had relaxed the said condition and had passed an order to pay the grant to the aforesaid trust for running the colleges and therefore the petitioner trust had preferred the present Special Civil Application under Article 226 of the Constitution of India for the prayers which are stated hereinabove.

4. It is the case of petitioner trust that though the petitioner trust had given an undertaking/affidavit that they will not claim any grant in future and though the affiliation is granted to the petitioner institution on condition that they will not be entitled to any grant permanently, other institutions which were similarly situated to that of the petitioner-institution and though

some of the institutions who were granted recognition/affiliation without grant are now paid the grant and the conditions have been revised. It is the case of the petitioner that one Samarpan Sewa Trust which is running the college at Village Vasan, District-Gandhinagar was granted approval by the State Government to run the college by order dated 28.4.1986 on condition that they will not be eligible for grant for 7 years and in spite of the aforesaid order, by order dated 22.11.1987 the aforesaid period of 7 years was reduced to 3 years. Thus it is contended that the State Government has made relaxation in the condition initially imposed upon it by the aforesaid order. It is the case of petitioner trust that one of the trustees of the aforesaid Samarpan Sewa Trust is Shri Shankersinh Vaghela, ex-Chief Minister of the Gujarat State.

5. It is the case of petitioner trust that with regard to one Sardar Patel Education Trust same kind of benefit was extended to it as the then Chief Minister Shri Keshubhai Patel wanted to favour the said Trust. It is further averred in the petition that one Arsh Education Trust, Vijapur was granted approval to start colleges by the State Government on condition that they will not be entitled to any grant for permanently, subsequently the said condition has been relaxed and the said trust and the colleges run by the said trust is converted into a grantable college and they are also paid the grant. It is contended on behalf of the petitioner that one Dr. A.K. Patel, who is the Minister in the Central Government is connected with the said Education Trust and therefore though approval was granted in the month of July 1995 on condition that it will not be given the grant subsequently by order dated 2nd August 1996 the State Government has decided to make the said college eligible for grant from the academic year 1998-99. On the basis of the aforesaid orders, it is contended on behalf of the petitioner trust that the State Government has relaxed the conditions with regard to grant in respect of those institutions whose trustees are either ministers and/or very influential persons and therefore not paying grant to the petitioner trust and not giving the similar treatment to the petitioner trust which is given to the other institutions the action of the respondent is discriminatory as violative of Article 14 of the Constitution of India. On the basis of the aforesaid orders it is also contended on behalf of the petitioner trust that the reason given by the respondent in rejecting the representations made by them is totally false. Therefore it was requested on behalf of the petitioner trust to direct the respondent to pay grant to

the petitioner trust while relaxing the conditions and/or directing the respondent to give the similar treatment to the petitioner trust which is given to the other institutions whose names are stated hereinabove.

6. This petition was admitted on 19th April 2000. However, till the hearing of the present Special Civil Application i.e., in April 2004 no affidavit-in-reply was filed on behalf of the respondent denying the allegations levelled in the petition and clarifying the stand of the State Government with regard to orders in respect of relaxation of grant in favour of aforesaid three institutions. However, after the matter was heard at length on 2nd April/7th April 2004 and when the matter was adjourned to 9th April 2004, an affidavit-in-reply was filed sworn by one Shri B.J. Brahmbhatt, Under Secretary, Education Department dated 9th April 2004 and in the aforesaid affidavit-in-reply they have dealt with and tried to explain the order with regard to relaxation of grant order passed in favour of one Arsh Education Trust, Vijapur and he has tried to justify the order which came to be passed in favour of said Arsh Education Trust, Vijapur. However, no affidavit-in-reply is filed denying the allegations and the averments with regard to order passed by the State Government relaxing the grant in favour of Samarpan Sewa Trust at Vasan, Dist-Gandhinagar, and Sardar Patel Education Trust, and thus the aforesaid averments and the allegations made in the petition with regard to aforesaid two institutions have gone unchallenged.

7. At the time of hearing of the present Special Civil Application, Shri A.D. Oza, learned Government Pleader appearing on behalf of the respondent has submitted that looking to the facts and circumstances of the case more particularly looking to the fact that the college run by Arsh Education Trust, Vijapur was a Girls College and therefore the condition with regard to grant was relaxed in favour of the said Arsh Education Trust. It is submitted that it is the policy decision of the State Government to grant or not to pay the grant to the educational institution and normally the Court should not interfere with regard to the same. He has also further submitted that as per the policy of the State Government more particularly in view of the fact that the petitioner Education Society has given an undertaking/affidavit to the effect that they will not be asking for any grant in future it is not open for the institution now to ask for the grant subsequently and therefore requested to dismiss the present Special Civil Application. He has also further submitted that so far as the orders passed in the

case of Samarpan Sewa Trust at Vasan, District-Gandhinagar and Sardar Patel Education Trust are concerned, they are wrong orders and on the basis of the aforesaid wrong orders the petitioner cannot claim any right and pray for equality and therefore requested to dismiss the present Special Civil Application.

8. I have heard the learned advocates appearing on behalf of the parties. It is true, that the petitioner trust had given an undertaking/affidavit before the authority that they will not be claiming any grant for running the college at Mahemdabad in future. However similar undertakings/affidavits were given by the other institutions namely Arsh Education Trust, Vijapur, and the conditions with regard to grant are also relaxed in favour of Samarpan Sewa Trust at Vasan, District-Gandhinagar and Sardar Patel Education Trust and inspite of the aforesaid facts the aforesaid three institutions are converted into grantable colleges. Therefore there is no reason whatsoever for not giving similar treatment to the petitioner trust also. So far as the contention of Shri A.D. Oza, learned Government Pleader appearing for the respondent to the effect that the orders passed in favour of Samarpan Sewa Trust, Vasan, Dist-Gandhinagar and Sardar Patel Education Trust are wrong orders and that those orders cannot give any right in favour of the petitioner trust is concerned, merely by stating that the said orders passed in favour of the aforesaid trusts are wrong orders will not suffice. No action has been taken by the State Government to withdraw/cancel the orders with regard to relaxation of conditions with regard to the grant. Even at the time of hearing of the present Special Civil Application, the learned Government Pleader is not in a position to make a statement that appropriate action would be taken with regard to withdrawing/cancelling the orders passed in favour of Samarpan Sewa Trust at Village Vasan, Dist-Gandhinagar and Sardar Patel Education Trust, and therefore not giving similar treatment to the petitioner trust which is given to Samarpan Sewa Trust at Village Vasan, Dist-Gandhinagar and Sardar Patel Education Trust and Arsh Education Trust, Vijapur, would be discriminatory and violative of Article 14 of the Constitution of India. The State Government cannot act as per their own whims and cannot pass order to favour only the persons who are very influensive. Under the circumstances, an appropriate direction is required to be issued to the State Government to give similar treatment to the petitioner trust which is given to Samarpan Sewa Trust at Village Vasan, Dist-Gandhinagar, Sardar Patel Education Trust and Arsh Education Trust, Vijapur with

regard to relaxation of condition of grant and to reconsider the case of the petitioner trust with regard to payment of grant accordingly.

9. So far as prayer of the petitioner for cancelling and setting aside the Government resolution by which the colleges recognised by the State Government are sought to be deprived of benefit of grant is concerned, as it is a policy decision and the grant is to be paid by the State Government considering the budgetary provisions and therefore this Court cannot grant any relief in favour of the petitioner trust for cancelling and setting aside the Government resolution by which the colleges recognised by the State Government are sought to be deprived of the benefits. It is for the State Government to decide and frame a policy with regard to payment of grant for running the colleges and the same is required to be considered on the basis of the budgetary provisions and therefore the prayer made by the petitioner with regard to cancelling the State Government resolution cannot be granted and the same is hereby rejected.

10. For the foregoing reasons, the petition partly succeeds. The respondent is directed to reconsider its decision with regard to payment of grant to the petitioner education society for running Arts and Commerce College at Mahemdabad by giving similar treatment to the education society which is given to Samarpan Sewa Trust at village Vasan, District-Gandhinagar, Sardar Patel Education Trust and Arsh Education Trust, Vijapur and to decide and dispose of the same considering the case of the petitioner with that of the aforesaid three institutions and the said exercise is required to be done within a period of three months from the date of receipt of writ of this Court and/or production of certified copy of this order before the authority concerned. The State Government is directed to pass a detailed reasoned order after giving opportunity of being heard to the petitioner trust. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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